

1
2
3
4
5
6
7
8
9
10
11
12

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

BERI MURPHY, et al.,
Plaintiffs,
v.
UNITEDHEALTHCARE INSURANCE
COMPANY, et al.,
Defendants.

Case No. 15-cv-03799-BLF

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS**

[Re: ECF 42]

On March 31, 2016, the Court heard oral argument on Defendants' Motion to Dismiss pursuant to Federal Rules of Procedure 12(b)(1) and 12(b)(6). Mot., ECF 42. The Court has considered the parties' briefing and oral argument. For the reasons stated on the record and below, Defendants' Motion to Dismiss is GRANTED IN PART and DENIED IN PART.

I. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) requires that each named Plaintiff prove that there is a live controversy between him/her and the defendants. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994); *Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000). To survive a motion to dismiss under Federal Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

II. DISCUSSION

A. Defendants

Defendants argue—and Plaintiffs concede—that the majority of the named Defendants are

1 not proper defendants in this case. *See Mot.* at 1, 8-9; *Opp.* at 12. In the Ninth Circuit, a plaintiff
2 may press an ERISA claim “against the plan as an entity and against the fiduciary of the plan.”
3 *Spinedex Physical Therapy USA Inc. v. United Healthcare of Arizona, Inc.*, 770 F. 3d 1282, 1297-
4 98 (9th Cir. 2014) (internal quotation marks omitted).

5 Plaintiffs Murphy, Favichia, and Amendt allege that their health benefit plans were
6 provided by UnitedHealthcare Insurance Company (“UHIC”), Sutter Health Sacramento Sierra
7 Region Self-Funded Health Plan, and Sutter VNA & Hospice Self-Funded Health Plan,
8 respectively. First Amended Compl. (“FAC”) ¶¶ 11, 13, 15. Plaintiffs also allege that Optum Rx is
9 the third-party pharmacy benefit claims administrator for each of these plans. *Id.* ¶¶ 13, 15, 18.
10 The parties agree that no other Defendants are proper defendants at this stage. Accordingly, the
11 Court GRANTS Defendants’ Motion to Dismiss the other Defendants without prejudice.

12 **B. Plaintiff Murphy**

13 Defendants argue that Ms. Murphy’s claims are moot because UHIC granted her coverage
14 for Harvoni in the course of its administrative process. *Mot.* at 7. As a result, they contend, she
15 fails the live controversy requirement of Rule 12(b)(1). *Id.* Ms. Murphy responds that she is a
16 proper plaintiff even if her claim is moot because her claim is capable of repetition, yet evades
17 review and because UHIC granted her claim only to make her claim “inherently transitory,” such
18 that it expired before the Court could consider class certification of it. *Opp.* at 7 (citing *United*
19 *States Parole Commission v. Geraghty*, 445 U.S. 388, 399 (1980)).

20 For either of these exceptions to apply, “the named plaintiff [must] have a personal stake at
21 the outset of the lawsuit.” *Geraghty*, 445 U.S. at 398. To have such a stake for an ERISA claim, “a
22 claimant must avail . . . herself of a plan’s own internal review procedures before bringing suit in
23 federal court.” *Diaz v. United Agr. Employee Welfare Ben. Plan and Trust*, 50 F.3d 1478, 1483
24 (9th Cir. 1995) (citation omitted). Here, Ms. Murphy filed suit in the middle of her administrative
25 appeal—that is, before exhausting her administrative remedies. Thus, Ms. Murphy did not “have a
26 personal stake at the outset of the lawsuit” and her claim is now moot.

27 At the hearing, Ms. Murphy argued that UHIC improperly denied her request for urgent
28 review of her administrative appeal and that a claim for that misconduct was ripe at the time of

1 filing. But that denial does not form the basis of Ms. Murphy's claims as pled, nor does it appear
2 to be reflective of the purported class' allegations. Accordingly, the Court GRANTS Defendants'
3 Motion to Dismiss Ms. Murphy's claims with leave to amend.

4 **C. Plaintiff Favichia**

5 Defendants similarly argue that Ms. Favichia lacks standing to bring her claim because she
6 failed to exhaust her administrative remedies before filing suit. *See Diaz*, 50 F. 3d at 1483. Ms.
7 Favichia concedes that she filed a second request for treatment rather than appealing her initial
8 denial, but argues that she can plead around this deficiency. Opp. at 12-17. Accordingly, the Court
9 GRANTS Defendants' Motion to Dismiss Ms. Favichia's claims with leave to amend.

10 **D. ERISA § 502(a)(3) Claims**

11 Finally, Defendants seek dismissal of Plaintiffs' ERISA § 502(a)(3) claim, *see* 29 U.S.C. §
12 1132(a)(3), on the grounds that they could get adequate relief under their ERISA § 502(a)(1)(B)
13 claim, *see* 29 U.S.C. § 1132(a)(1)(B). Mot. at 10. Plaintiffs respond that the two claims are
14 distinguishable because their § 502(a)(3) claim seeks not only monetary relief for denial of past
15 benefits, but also class-wide injunctive and equitable relief. Opp. at 17.

16 In light of Plaintiffs claim for injunctive relief—and Defendants' withdrawal of their
17 argument that a change in policy since this lawsuit was filed has mooted the claim, *see* Reply at 7,
18 ECF 45—it is not clear at this stage of the lawsuit that benefits under § 502(a)(1)(B) would
19 provide Plaintiffs a sufficient remedy for their § 502(a)(3) claim. *See, e.g., Caplan v. CAN Short*
20 *Term Disability Plan*, 479 F.Supp. 2d 1108, 1113 (N.D. Cal. 2007); *Davis v. Bank of America*
21 *GroupBenefits Program*, No. C10-5199, 2011 WL 1298860 at *4 (N.D. Cal. Apr. 4, 2011).
22 Accordingly, the Court DENIES Defendants' Motion to Dismiss the § 502(a)(3) claim.

23 **IT IS SO ORDERED.**

24 Dated: April 1, 2016

25 
26 BETH LABSON FREEMAN
27 United States District Judge
28